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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air - Presentation by the Commission

Delegations will find attached the presentation on Air Passengers Rights made by the Commission during the Aviation Working Party on 21 January 2020.



Council – AVIA Working Party

**External study on the current level of
air passenger rights in the EU**
Fact-finding study, by Steer

Brussels, 21 January 2020

European Commission, DG MOVE,
Unit B5 – Social Aspects, Passenger Rights & Equal Opportunities



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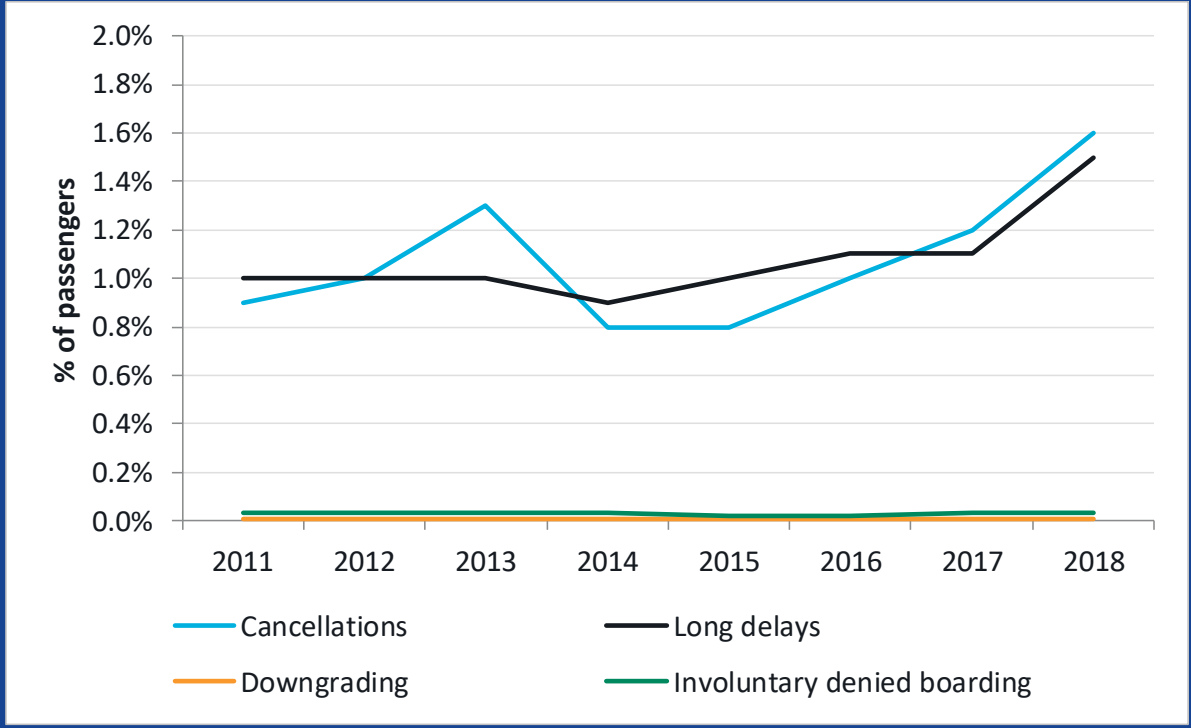
Airline insolvencies from an air passenger rights perspective

Questions



1. Level of disruption experienced by passengers (i)

- Proportion of passengers affected (2011-2018)



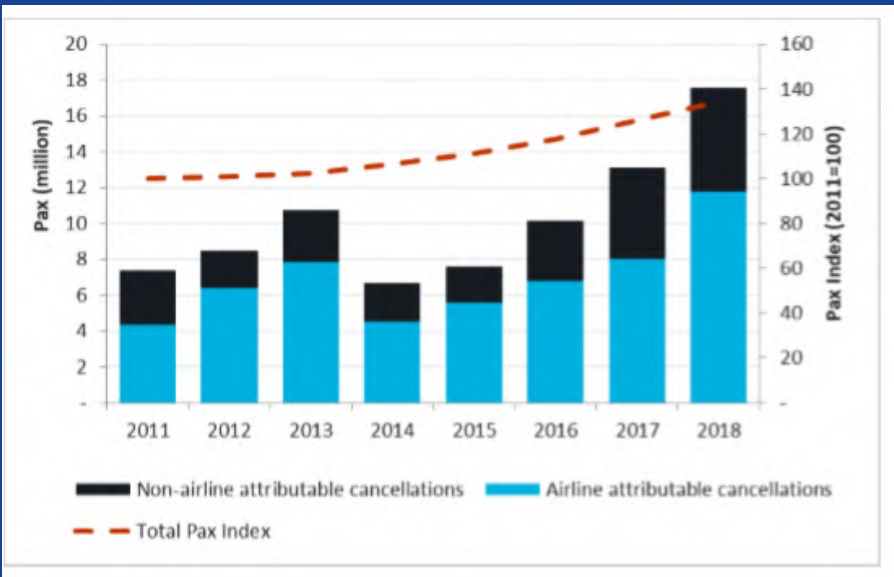
Source: Eurocontrol CODA, Eurostat, OAG, stakeholder consultation, Steer analysis

External study on the current level of air passenger rights in the EU, Steer



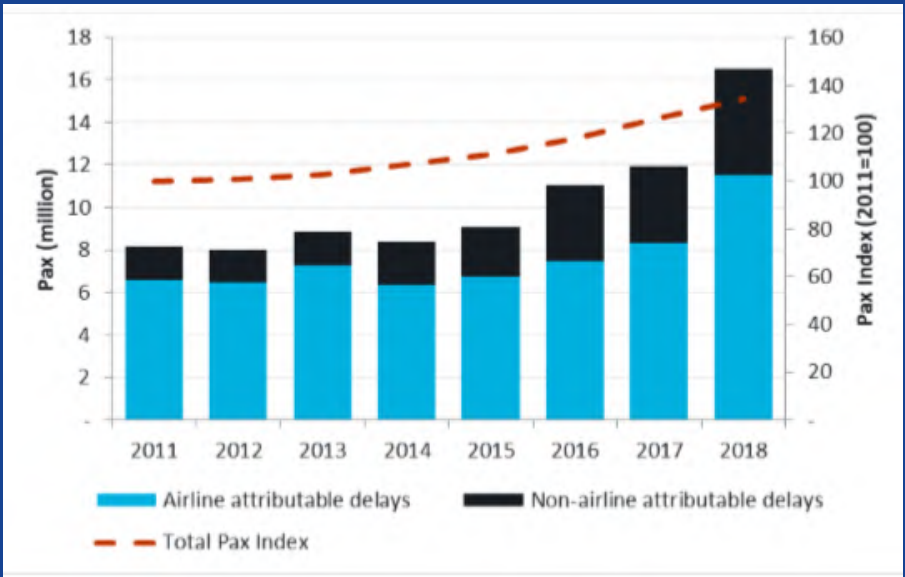
1. Level of disruption experienced by passengers (ii)

Number of cancelled passengers (2011-2018)



Source: Steer analysis of airline stakeholder and UK CAA data

Number of delayed passengers (2011-2018)



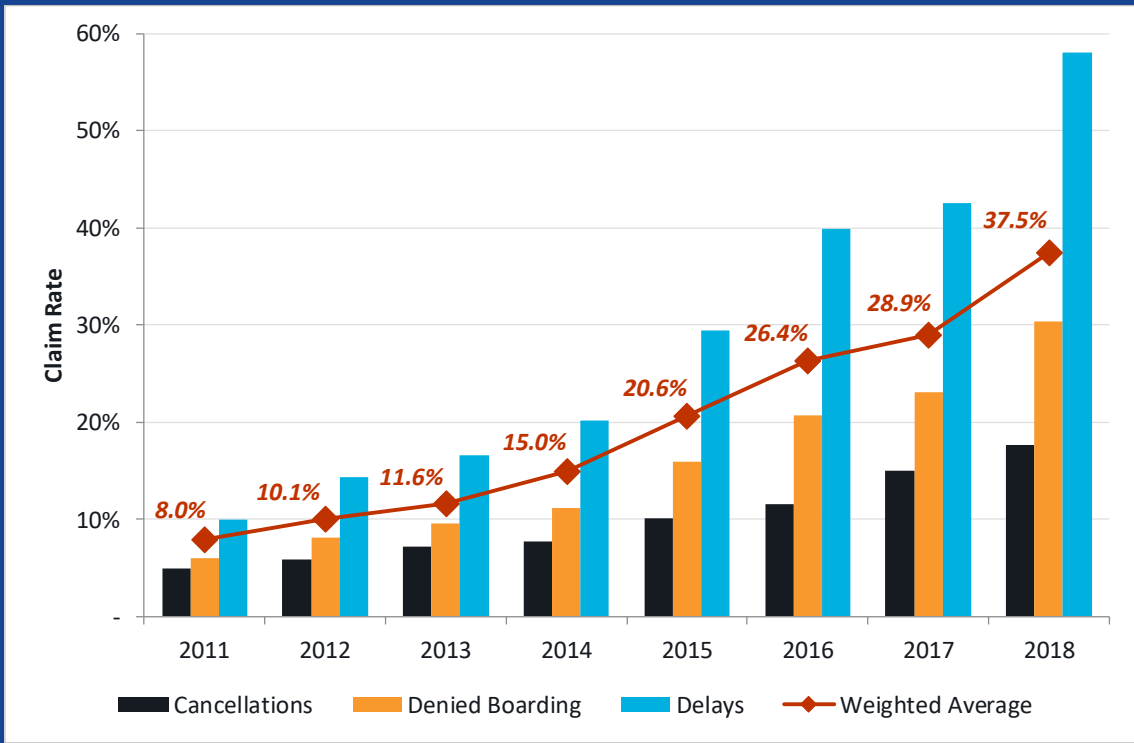
Source: Steer analysis of CODA data

- Both the number of cancelled passengers and delayed passengers increased faster than the total number of passengers in this period;
- Higher proportion of cancellations attributable to airlines, lower proportion in the case of delays (i.e. external factors have become more prevalent, incl. ATM related disruptions).



1. Level of disruption experienced by passengers (iii)

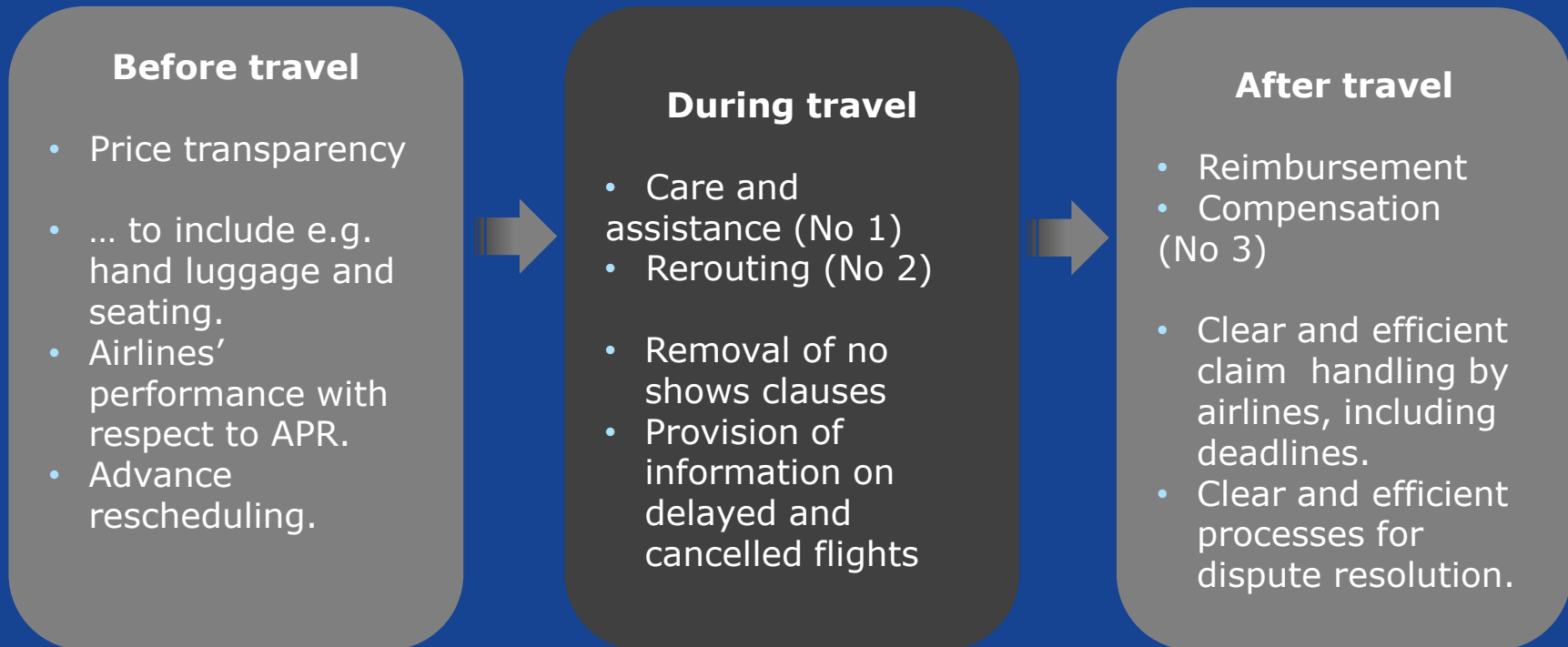
- Claim rate** = $\frac{\text{eligible passengers successfully claiming compensation}}{\text{total eligible passengers}}$



Source: Stakeholder consultation, Steer analysis

2. Air passengers' perspective (i)

- Passenger representatives and other stakeholders agree that passengers' priorities

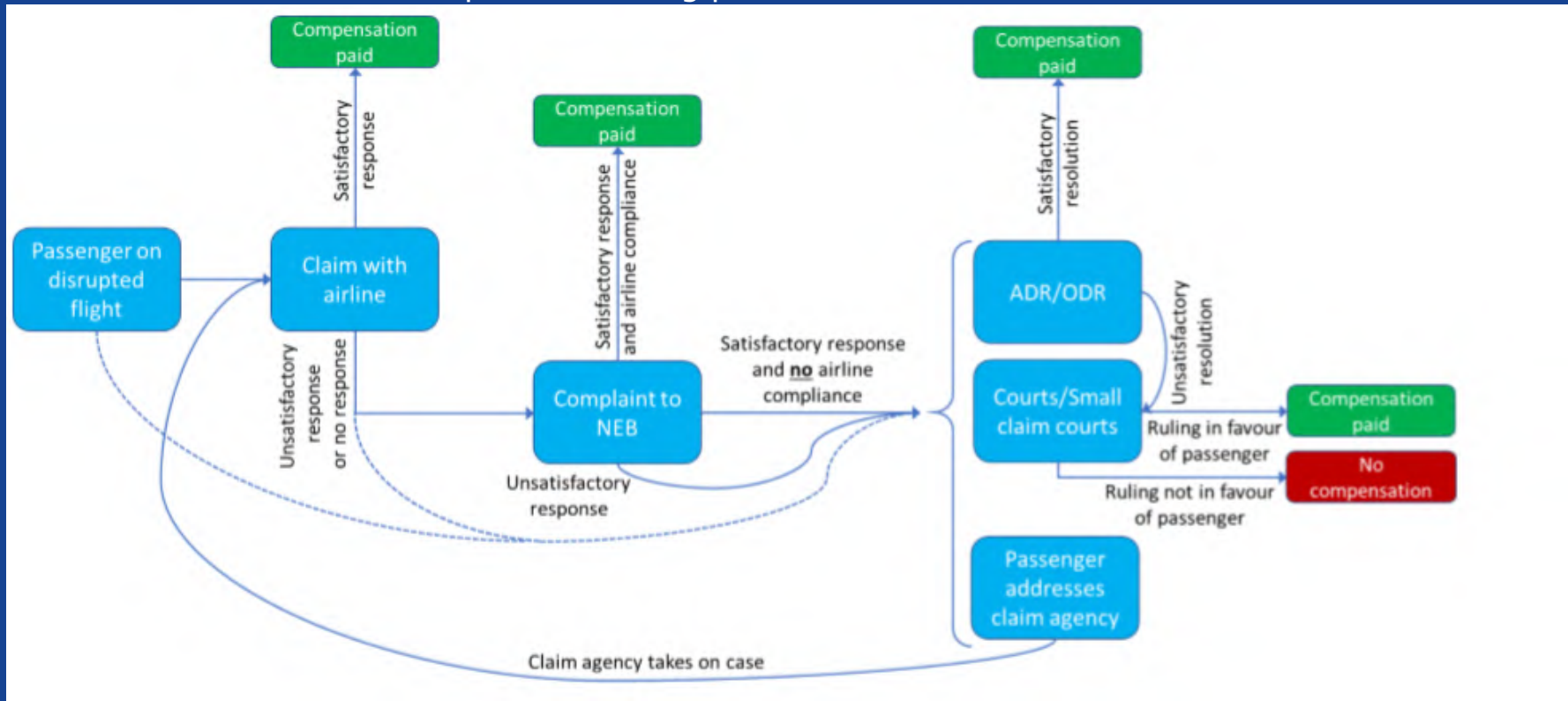


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2. Air passengers' perspective (ii)

- Passengers expect a simple system that ensures fair outcomes.
- Burden and costs for passengers

Illustration of claim and complaint handling process and outcomes



Source: Steer analysis

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2. Air passengers' perspective (iii)

- Some lessons from Special Eurobarometer 485 on Passenger rights:



28% of Europeans who travelled by air during the last 12 months experienced at least one disruption



53% of the respondents who experienced a disruption by air say that some form of remedial action was taken



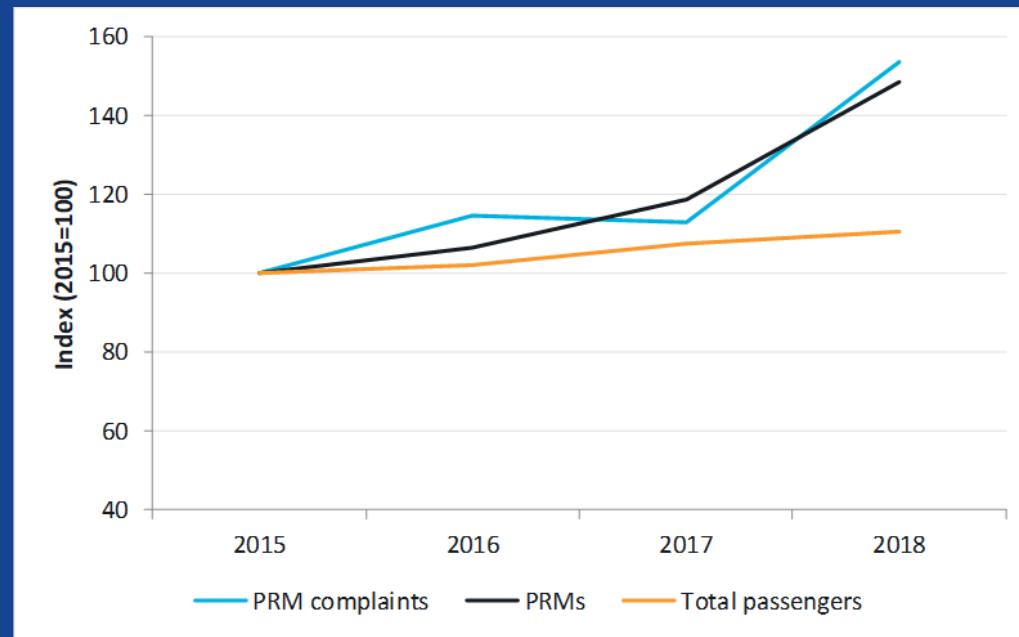
Source: Kantar, for the European Commission, 2019

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2. Air passengers' perspective (iv)

- Airports and airlines generally comply with Regulation 1107/2006 requirements but varying service levels provided to PRMs
- Low total number of PRM complaints received by NEBs
- Some areas of concern identified:
 - Denied boarding of PRMs at the gate
 - Damaged mobility equipment
 - Pre-notification

Index of PRM complaints received by NEBs, PRMs reported by airlines and total passengers (2015-2018)

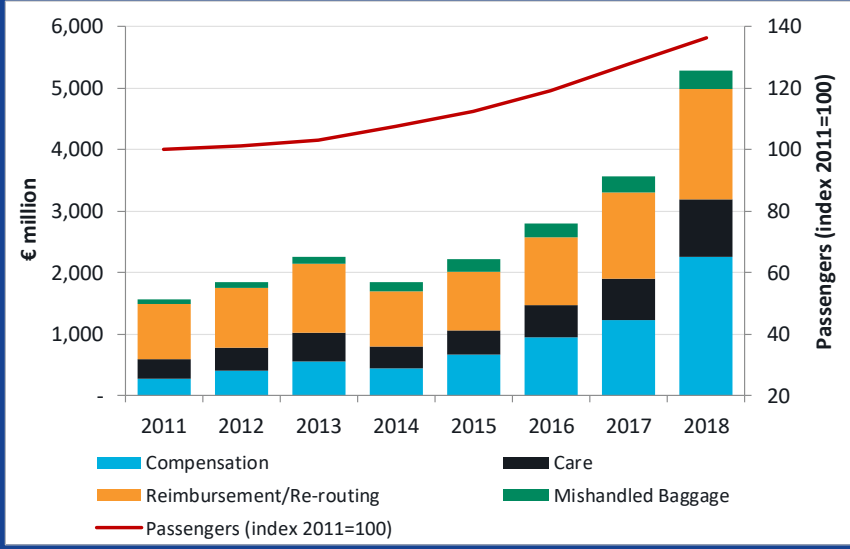


Source: Stakeholder consultation, Steer analysis



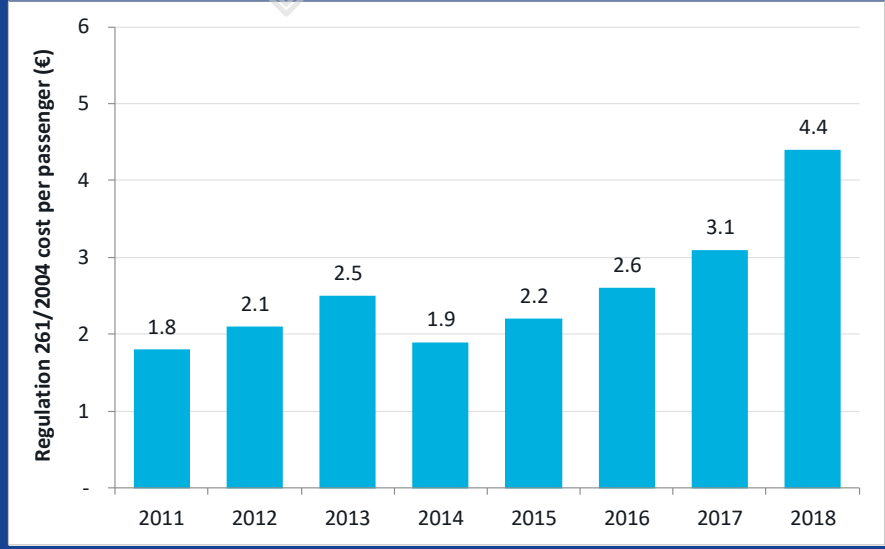
3. Airlines' and airports' perspective (i)

Direct air passenger rights costs for airlines (2011-2018)



Source: Eurocontrol CODA, Eurostat, OAG, SITA, stakeholder consultation, Steer analysis

Regulation 261/2004 direct cost per passenger (2011-2018)



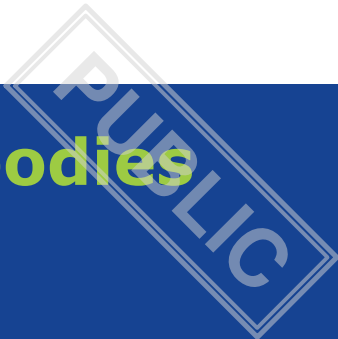
Source: Eurocontrol CODA, Eurostat, OAG, stakeholder consultation, Steer analysis

- Direct costs arise for airlines from the following obligations:
 - Provision of care and assistance
 - Reimbursement/re-routing
 - Compensation
 - (Mishandled baggage)
- Drivers of the growth in costs:
 - Traffic growth (+/- 25%)
 - Increased disruption (+/- 33%)
 - Increased claim rate (+/- 33%)

3. Airlines' and airports' perspective (ii)

- Estimated direct cost of Regulation 261/2004 on a per passenger basis:
 - Per passenger: €1.8 in 2011 | €4.4 in 2018
 - Per passenger affected by disruption: €89.3 in 2011 | €138.3 in 2018
- Estimated direct cost of Regulation 261/2004 relative to:
 - Other airline costs: 2% of cost base in 2014 | 6% of cost base in 2018
 - Airline profits: 59% of EBIT in 2012 | 18% of EBIT in 2015 | 33% of EBIT in 2018
- Indirect cost of Regulation 261/2004:
 - Mitigation measures (e.g. additional aircraft in fleet on standby, lower aircraft utilisation, conservative scheduling)
 - Administrative costs (e.g. claim handling staff and processes)
 - Legal costs (e.g. representation in courts across different Member States)

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4. National enforcement bodies

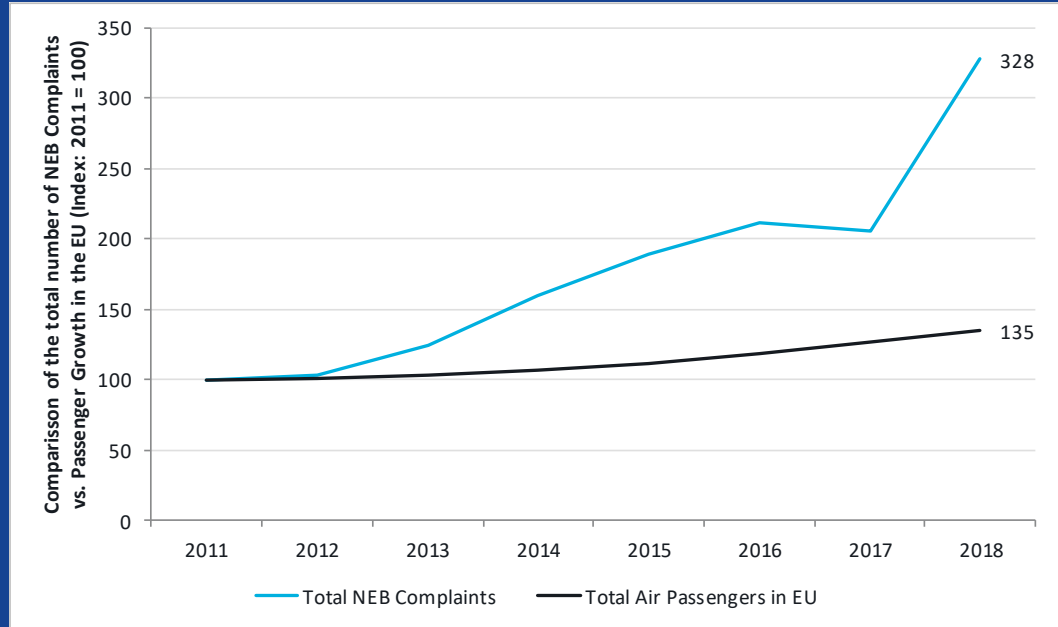
Regulation 261/2004 NEBs by type of organisation

Regulation 261/2004	Civil Aviation Authority	Consumer Arbitration Body	Consumer and/or Competition Authority	Ministry of Economics
NEBs	24	3	6	1

Growth in complaint volume handled by NEBs compared to growth in passenger volume

Source: Stakeholder consultation, Steer analysis

- Different approaches creating different outcomes for passengers and airlines: individual complaint handling v system-level monitoring;
- Dramatic increase in the volume of complaints handled by NEBs: 3x more than in 2011;
- NEB cooperation is seen as good and supported by new tools.



Source: Stakeholder consultation, Steer analysis



5. The general consumer protection framework and other means of redress (i)

- The interaction between these three frameworks creates complexity, has poor intelligibility and generates delay and cost.

Air passenger rights (Regulation 261/2004)	General consumer protection framework	Other means of redress
<ul style="list-style-type: none"> • Airlines • National Enforcement Bodies (NEBs) 	<ul style="list-style-type: none"> • European Consumer Centres (ECC) • Consumer Protection Cooperation (CPC) • Package Travel Directive (PTD) 	<ul style="list-style-type: none"> • Alternative Dispute Resolution (ADR) / Online Dispute Resolution (ODR) • Courts • Claim agencies

Source: Steer analysis

- European Consumer Centres => act as a facilitator across the whole system. Face some challenges due to the increased volume of cases.
- Consumer Protection Cooperation => no substantive change since 2011, particularly since complaints tend to be dealt with individually by NEBs rather than at system level.
- Package Travel Directive => overlapping compensation entitlements with Regulation 261/2004 and practical complications arising from the ownership of the passenger/customer relationship between travel agents and airlines.

5. The general consumer protection framework and other means of redress (ii)

- Alternative dispute resolution
 - Relatively efficient and effective way of handling complaints but...
- Courts
 - Regulation 261/2004 not always consistently interpreted
 - Large volume of cases consuming considerable resources
 - Small claims procedures effective and inexpensive
- Claim agencies
 - Process claims on a very large scale with a high degree of automation driving up the claim rate and generating a very high volume of activity for airlines, NEBs and the courts.

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6. Development of air passenger rights outside the EU

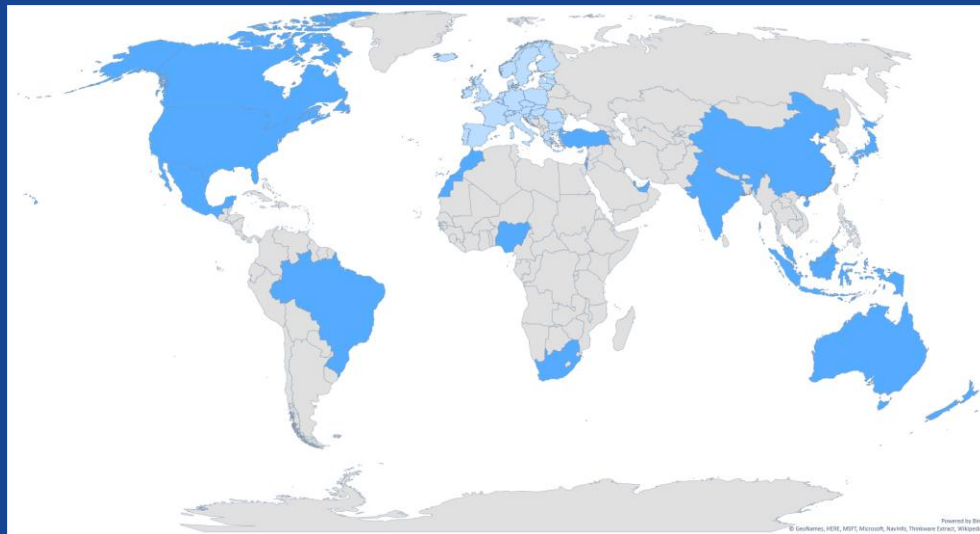
- ICAO has established a set of Core Principles on Consumer protections for before, during and after travel.

ICAO Core Principles on Consumer Protection	EU Framework
Before travel principles	Regulation 1008/2008 Regulation 2111/2005
During travel principles with the exception of: - Passengers should be kept informed throughout their journey - Mechanisms involving all relevant stakeholders for passengers to receive assistance in cases of massive disruption	Regulation 261/2004
During travel exceptions above	2013 Proposal
After travel	Regulation 261/2004 (strengthened by 2013 Proposal)

Source: Steer

- Approaches to air passenger rights protections range from regulatory (as in the EU) to voluntary (as in the UAE).
- Good practices
 - Formal reporting requirements for airlines
 - Information provision during the journey
 - Quick and accessible system of complaint handling
 - Transparent claim handling processes and platforms between airlines and authorities

Map of non-EU countries included in analysis



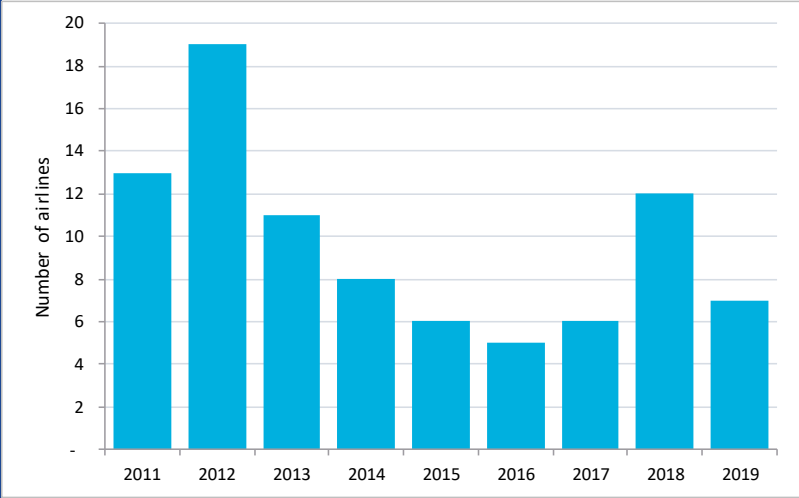
Source: Steer

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7. Airline insolvencies from an air passenger rights perspective

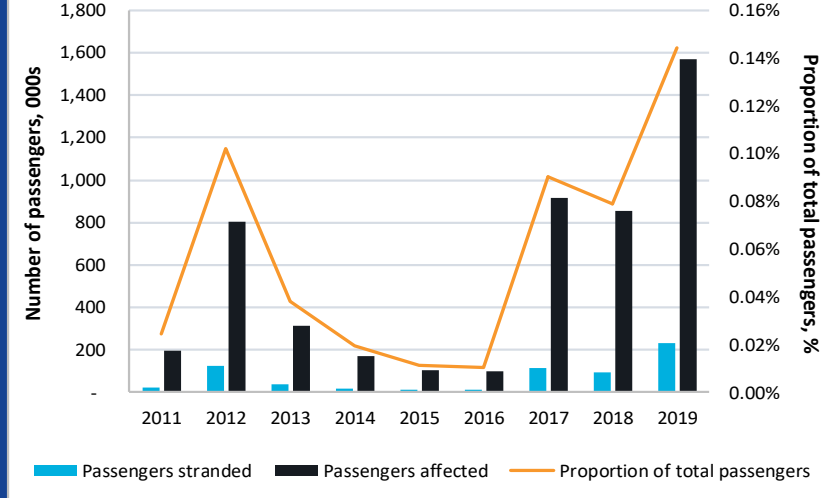


Airlines insolvencies (2011-2019)



Source: OAG, Press, stakeholder consultation, Steer analysis

Passengers affected and stranded (2011-2019)



Source: OAG, Press, Eurostat, stakeholder consultation, Steer analysis

Recoverable costs under different protection schemes

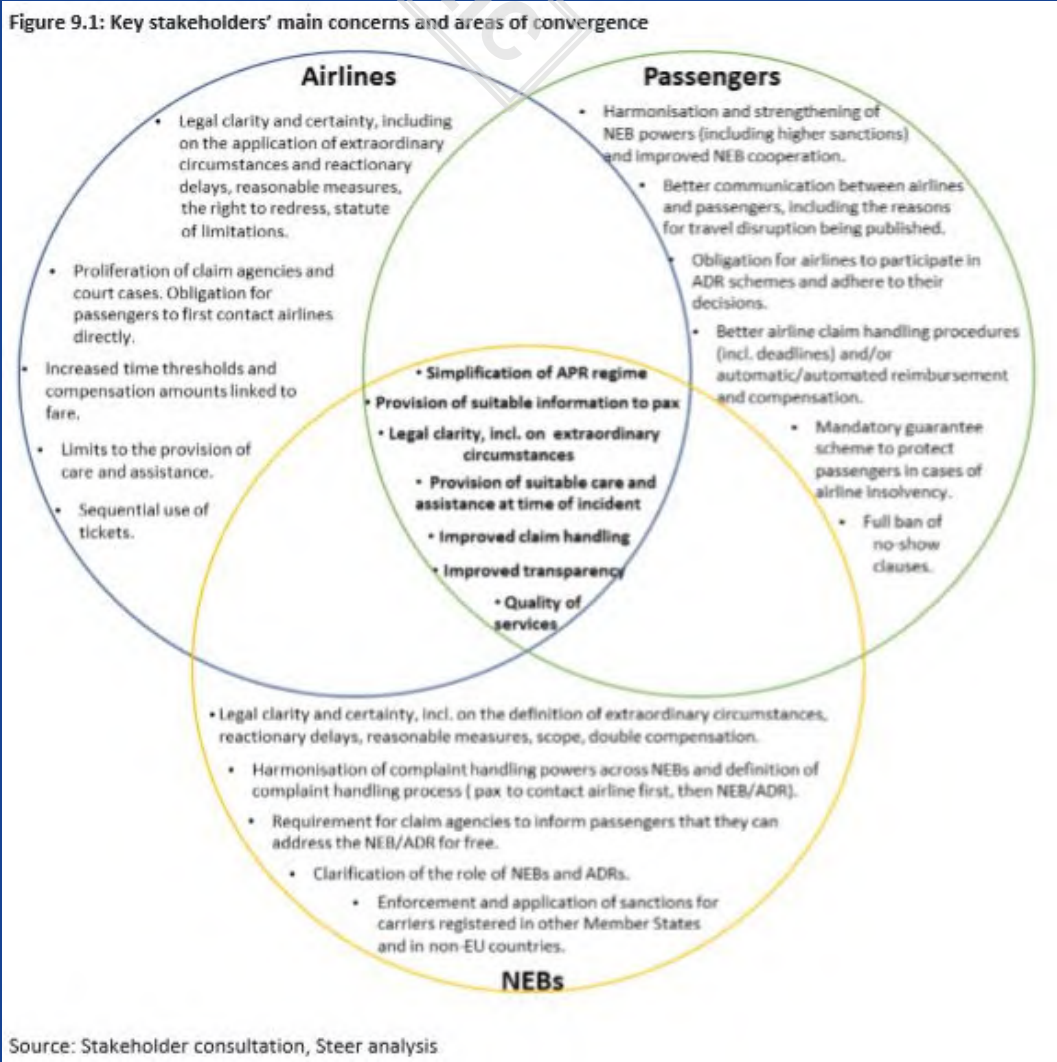
Cost	Package travel	SAFI	Credit Card	Hahn Air	BSP	No cover
Original flight	✓	✓	✓	✓	✓	✗
Replacement flight	✓	✓	✗	✓		✗
Non-refundable accommodation and services	✓	✗	✗	✗	✗	✗
Additional accommodation	✓	✗	✗	✗	✗	✗
Communication	✓	✗	✗	✗	✗	✗
Compensation for damages	✓					

Source: Steer analysis

Conclusions and possible ways forward

→ **Conclusion**

→ **Possible ways forward**





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Questions

- More questions on the study / closing event => please contact us at [**MOVE-APRIGHTS@ec.europa.eu**](mailto:MOVE-APRIGHTS@ec.europa.eu)



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